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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/709,597	05/17/2004	Uta Nauert	UTA6535.007	3596

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EXAMINER
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SWIATEK, ROBERT P

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 01/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/709,597

Applicant(s)

NAUERT, UTA

Examiner

Robert P. Swiatek

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 14 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-27 and 29-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-18, 27 and 29-33 is/are allowed.
- 6) ☒ Claim(s) 19, 20 and 22-26 is/are rejected.
- 7) ☒ Claim(s) 21 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 19, 20, 22-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Holland (US 4,546,730) in view of Tseng (US 6,418,950 B1). The Holland feed station includes feed container 12, partitioned so it can contain both water and food, and post 30 extending upwardly from the container to support an umbrella 62, 64. The umbrella is not disclosed as being retractable, although it resembles one that is. The patent to Tseng discloses a retractable umbrella including a tube 10 upon which an actuator 30 is disposed. Sliding the actuator 30 up or down the tube until the actuator engages an upper or lower latch 80 causes the umbrella canopy to lock in a corresponding opened or closed position. The umbrella canopy of Tseng interconnects with the actuator 30 via a first link 14 and a second link 40. It would have been obvious to one skilled in the art to employ the retractable umbrella canopy and actuation mechanism of Tseng in place of the (assumed) fixed umbrella of Holland, in order to allow the umbrella to be folded for transportation or storage as well as to permit the umbrella/feeder combination to be used indoors where a deployed umbrella is unnecessary. As to claims 23-25, use of graphic designs on the combination umbrella and container, as well as the specific color of the umbrella, would have been obvious to one skilled in the art wishing to enhance the product's

Art Unit: 3643

aesthetic and commercial appeal. With regard to claim 19, the Office maintains the Holland container 12 is "constructed to feed hummingbirds," although this might not have been the *intention* of the inventor when designing his feeder. Specifically, nothing in the form of the Holland container 12 prevents a hummingbird from accessing the water in the container if it wished to; in the event, the Holland container also is constructed to feed other animals as well, animals perhaps not envisioned by the inventor, such as mice, flies, gophers, and eagles. Should the identical container structure then receive multiple patents simply because an inventor didn't envision a particular animal species using it? Applicant's remarks concerning the ground level position of the Holland container and its open-topped nature likewise are deemed spurious since these features—as noted—merely pose inconveniences and not bars to birds as agile as hummingbirds.

Claim 11 is objected to because of the following informalities: It must end with a period. Appropriate correction is required.

Claim 21 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

The abstract of the disclosure is objected to because in line 1, “is disclosed” should be deleted. Correction is required. See MPEP § 608.01(b). Examiner appreciates applicant’s copy of the dictionary definition of the term *disclosed*, but use of the term—rather than its meaning—in the abstract is the core of the issue. The existence of an abstract always implies disclosure of a particular invention, notwithstanding the otherwise superfluous appearance of the term *disclosed* (or one of its variants) in many patents.

Applicant's arguments filed 14 January 2005 have been fully considered but they are not persuasive. Claims 19, 20, 22-26 are not believed allowable for the reasons set forth above.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Art Unit: 3643

Summary: Claims 1-18, 27, 29-33 have been allowed; claims 19, 20, 22-26 have been rejected; claim 21 has been objected to; claim 28 has been cancelled.

RPS: 0703/308-2700

27 January 2005

*Robert P. Swiatek*

ROBERT P. SWIATEK

PRIMARY EXAMINER

ART UNIT ~~333~~ 3643